



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0001

RIN 1625-AA09

Drawbridge Operation Regulation; Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating schedule that governs the South Park Highway drawbridge, across the Duwamish Waterway mile 3.8, at Seattle, WA. Due to infrequent bridge opening requests, King County, the bridge owner, is requesting to change the current regulation to reduce the bridge operating costs by eliminating the nighttime bridge operator, and replace the operator with an as needed operator. The modified rule would change from opening on-demand to a 12 hour advance notice for a late evening to early morning opening.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: You may submit comments identified by docket number USCG-2019-0001 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Steven Fischer, Thirteenth District Bridge Administrator, Coast Guard; telephone 206-220-7282, email, d13-pf-d13bridges@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

King County owns the South Park Highway drawbridge across the Duwamish Waterway at mile 3.8, but the Seattle Department of Transportation (SDOT) operates the South Park Highway Bridge. On behalf of SDOT, King County is requesting a permanent change to the existing operating regulation. Due to infrequent bridge opening requests from 11 p.m. to 7 a.m., King County is proposing to eliminate the nighttime bridge operator. The proposed regulation change would allow SDOT to not have a bridge operator attending the subject bridge from 11 p.m. to 7 a.m. unless at least 12 hours notice has been received prior to an opening request.

Marine traffic on the Duwamish Waterway consists of vessels ranging from small pleasure craft, small tribal fishing boats, large size pleasure motor vessels and large commercial vessels and barges. The subject bridge currently operates in accordance in 33 CFR § 117.1041 (a) (2). This bridge provides a vertical clearance in the closed-to-navigation position approximately 34 feet in the center of the span and 27 feet at the sides of the span above mean high water.

III. Discussion of Proposed Rule

This proposed rule amends 33 CFR 117.1041 (a) (2) to provide specific requirements for the operation of the South Park Bridge. The 2017 South Park Bridge log book shows a low number of drawbridge opening requests during late nighttime hours. Of the 524 openings in 2017, approximately 4.5 percent, or 24 total requests occurred between the 11 p.m. and 7 a.m. Openings from 11 p.m. to 7 a.m. for 2014, 2015 and 2016 ranged from 5% to 10% of all openings. Based off of the historical data obtained from the bridge opening logs, King County is proposing that the subject bridge need not open for vessel traffic from 11 p.m. to 7 a.m. unless a 12 hour notice is given to the South Park Bridge. Further, King County is proposing between 11 p.m. and 7 a.m., vessels engaged in sea-trials or dredging activities may request a standby operator if at least a 24 hour notice is given to the South Park Bridge. Vessels able to transit under the bridge without an opening may do so at any time. If emergency responders needs a bridge opening between 11 p.m. and 7 a.m., this rule change would require the Fremont Bridge operator, across the Lake Washington Ship Canal, to open the South Park Bridge within 45 minutes from initial notification to the Fremont Bridge.

On March 13, 2018, we published a temporary test deviation entitled Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA, in the Federal Register (83 FR 10785). The test deviation ran from March 22, 2018 to September 17, 2018. We received three comments on this test deviation. One comment did not relate to operations of the South Park Bridge. King County submitted a rebuttal addressing the two other comments on October 17, 2018. We have read both submittals from each party, and will discuss the material herein.

A. The first commenter raises two concerns pertaining to the closure timing of the bridge. First, the commenter states that with the First Avenue South Bridge closed from 6 a.m. to 9 a.m., marine vessels would have to wait until 9 a.m. for an opening of the South Park Bridge. Second, the commenter raised concern that the 45 minute response time for an emergency opening is unnecessarily long. The South Park Bridge will open on signal from 11 p.m. to 7 a.m., if at least a 12 hour notice is given to the bridge operator. From 7 a.m. to 11 p.m. the South Park Bridge will have a bridge operator. The SDOT has performed travel time tests between the Fremont Bridge and the South Park Bridge between 11 p.m. and 7 a.m. In all cases, the response time was less than the 45 minutes that Seattle Fire Department needs to respond. We have not identified any impacts on marine navigation with this proposed rule.

B. The second commenter discusses the regulation's impact on small entities. The Coast Guard's response is contained in Section III(B).

III. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability for the subject bridge to open on signal from 11 p.m. to 7 a.m. after receiving at least a 12 hour notice by telephone or VHF radio. This proposed rule also applies to opening the subject bridge for marine vessels engaged in emergency responses from 11 p.m. to 7 a.m. Emergency responders will give at least 45 minutes of notice to the Fremont Bridge operator to open the South Park Bridge on signal. The only emergency response vessel that requires an opening of the subject bridge is the Seattle Fire Department’s (SFD) large fireboat. The SFD has agreed, and will change their response procedures, to notify the Fremont Bridge when an emergency call is received for the Duwamish Waterway. The SFD’s large

fireboat response time for the Duwamish Waterway is 45 minutes, and making a notification of 45 minutes for a South Park Bridge opening will be implemented. The SFD has a smaller response vessel that does not require an opening of the subject bridge, and this fireboat has a faster response time to the Duwamish Waterway. SFD stated for a Duwamish Waterway marina fire, the small vessel will be the first to respond, and request assistance from the larger fireboat after the vessel arrives on scene. The Coast Guard has made this finding based on the fact that the proposed change still allows any vessel needing a drawbridge opening to transit past the bridge will still receive an opening with the proper advance notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard has made this finding based on the fact that the proposed change still allows any vessel needing a drawbridge opening will receive an opening with at least 12 hours of notice, and may request a standby bridge operator during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the South Park Bridge operator.

The Coast Guard tested this proposed regulation change with a temporary test deviation from March 22, 2018 to September 17, 2018 to ensure the rule would not unreasonably obstruct navigation or negatively impact small maritime business. We received no complaints during the test deviation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power

and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a

reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1041 by revising paragraph (a) (2) and adding paragraph (a)(3) to read as follows:

§ 117.1041 Drawbridge Operation Regulation; Duwamish Waterway;

Seattle, WA.

(a) ***

(1) ***

(2) The draw of the South Park Bridge, mile 3.8, need not be opened for the passage of vessels from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays other than Columbus Day.

(3) Between the hours of 11 p.m. and 7 a.m., Monday through Sunday, the South Park Bridge shall open if at least a 12 hour notice is given by telephone or VHF radio to the drawtender at the South Park Bridge. If emergency responders require a bridge opening between 11 p.m. and 7 a.m., the South Park Bridge shall open within 45 minutes from initial notification to the Fremont Bridge operator. Vessels engaged in sea-trials or dredging activities may request a standby drawtender to open the bridge, on demand, during sea-trials and/or dredging operations, if at least a 24 hour notice is given to the South Park Bridge drawtender.

DAVID G. THROOP
Rear Admiral, U. S. Coast Guard
Commander, Thirteenth Coast Guard District

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